

HOUSE BILL 248

By Scroggs

AN ACT to amend Tennessee Code Annotated, Section 40-35-302, relative to the provision of probation supervisory services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-35-302, is amended by deleting subsection (g)(1) and substituting instead the following:

(g) (1) Except as provided in subdivision (g)(2):

(A) A private entity that provides probation supervisory services shall be required to perform all of the following:

(i) Provide a report to the clerk of the criminal court and general sessions court in each judicial district in which the entity proposes to provide misdemeanor probation services on a quarterly basis in a form and manner as is specified by the clerk, provided such report shall contain all of the information required in subsection (g)(1)(G);

(ii) Provide an application form to all of the criminal court and general sessions court judges in each judicial district in which the entity proposes to provide misdemeanor probation services. Such application

shall be on a form and in a manner specified by the judges and shall contain all of the information required by subsection (g)(1)(E) of this subsection. Such application shall be updated and refiled on an annual basis, no later than thirty (30) days prior to the anniversary of the date of filing of the previous application;

(iii) Supervise all misdemeanor defendants sentenced by a proper order of probation to be supervised by the entity and to assist the defendants so sentenced in completing all court-ordered conditions of probation;

(iv) Maintain documentation on all misdemeanor defendants sentenced to be supervised by the entity. All books, records and documentation maintained by the entity relating to work performed or money received for the supervision of misdemeanor defendants so sentenced shall be maintained for a period of three (3) full years from the date of the final payment or audit. Such records shall be subject to audit, both fiscal and performance, at any reasonable time and upon reasonable notice by the court or courts in which the entity operates or their duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles; and

(v) Any additional duties that the judge or judges of the courts for which the entity provides misdemeanor probation supervisory services may in writing require.

(B) The following minimum education standards are required for certain employees of an entity established for the purpose of supervising misdemeanor probationers:

(i) The chief executive officer of an entity offering probation supervision shall have a bachelor's degree from an accredited university in any of the following fields: criminal justice, administration, social work, or the behavioral sciences and two (2) years of experience in criminal justice or social work; provided, that four (4) years of professional administrative experience with an organization providing services in criminal justice or social work may be substituted for the bachelor's degree;

(ii) An employee responsible for providing probation supervision and employed by an entity shall have at least four (4) years of experience in a criminal justice or a social services agency providing counseling services or shall have a bachelor's degree and/or associate's degree from an accredited college or university in any of the following fields: criminal justice, administration, social work, or the behavioral sciences; and

(iii) A person employed on July 1, 1997, by an entity established for the purpose of supervising misdemeanor probationers shall have four (4) years from such date to comply with the minimum education requirements established by this section;

(C) Any entity providing probation supervisory services shall post a liability insurance policy and a performance bond in the amounts stated:

(i) A liability insurance policy in an amount at least equal to the limits of governmental liability established in the Governmental Tort Liability Act, codified in Tennessee Code Annotated, Title 29, Chapter 20, that is in effect on the date the services are provided. Nothing in this subdivision shall be construed as prohibiting such entity from carrying a liability insurance policy in excess of the limits of liability provided in the Governmental Tort Liability Act. Such policy shall be for the purpose of reimbursing an injured or aggrieved party for any damages

or expenses for which the entity providing probation supervisory services is found liable by a court of competent jurisdiction.

(ii) A performance bond issued by a corporate surety in the amount of twenty-five thousand dollars (\$25,000). Such bond shall be to provide recourse to the governmental entity for which the entity is providing probation supervisory services in the event of nonperformance, default, bankruptcy or failure of the entity to perform the required services.

(iii) The comptroller of the treasury shall design a uniform performance bond form to be used by all private entities providing misdemeanor probation supervisory services in this state.

(iv) A copy of the liability insurance policy and the performance bond shall be filed with the clerk of all courts in each county in which the entity proposes to provide such probation supervisory services.

(D) Any entity providing or proposing to provide misdemeanor probation services shall investigate the criminal record for each employee and shall include in its application form any criminal conviction of each employee;

(E) The application form required by subsection (g)(1)(A)(ii) of this subsection shall contain the following information:

(i) The title of the entity;

(ii) Its form of business organization;

(iii) The office and mailing address of the entity;

(iv) The names of the employees who will provide services and their position with the entity, and their credentials;

(v) A sworn statement that the credentials of all employees meet the minimum standards under subdivision (g)(1)(B);

(vi) A sworn statement that a criminal record search has been conducted and, if a criminal conviction has been discovered, the name of the employee and the criminal conviction;

(vii) A credit history of the entity including any judgments or lawsuits; and

(viii) A description of the services to be provided by the entity and the fee structure for the services to be provided;

(F) The application required by subsection (g)(1)(A)(ii) shall also contain an affidavit filed under penalties of perjury that it is complete and accurate and contains all of the information required by subdivision (g)(1)(E). The application with such affidavit shall be filed with the clerk of the criminal court and general sessions court in each judicial district in which the entity proposes to provide misdemeanor probation services;

(G) The quarterly report required to be filed pursuant to subsection (g)(1)(A)(i) shall include the following information:

(i) The caseload for the entity;

(ii) The number of contact hours with offenders;

(iii) The services provided;

(iv) The number of filings for probation revocation and their dispositions;

(v) A financial statement including administrative costs and service costs;

and

(vi) Contributions, if any, to the criminal injuries compensation fund;

(H)

(i) It is an offense for a governmental employee, including a judge, or the employee's immediate family, to have a direct or indirect personal interest in a private entity that provides probation supervisory services or to receive anything of value in an individual capacity from such an entity.

(ii) It is an offense for a private entity that provides probation supervisory services to give or offer to give anything of value to a governmental employee, including a judge, or the employee's immediate family, in such employee's individual capacity.

(iii) A violation of subdivision (i) or (ii) is a Class C misdemeanor; and

(iv) The provisions of this section shall not be construed to amend or abridge any contract or operating agreement between any court or county government and any agency or individual presently supplying such services to such court or county government pursuant to this chapter.

SECTION 2. For purposes of the Comptroller of the Treasury designing a uniform performance bond form as provided in subsection (g)(1)(C)(iii) of SECTION 1 of this act, it shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2001, the public welfare requiring it.